

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

DANNY SARTAIN,	)	CV 12-80-BU-DLC-CSO
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
LEROY KIRKEGARD,	)	
	)	
Defendant.	)	

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United States Magistrate Judge Carolyn Ostby issued Findings and Recommendations recommending denial of Plaintiff Danny Sartain's motion for summary judgment on December 12, 2012. (Doc. 7.) Judge Ostby also denied Plaintiff's motions for appointment of counsel and for discovery. Plaintiff timely filed objections and is therefore entitled to de novo review of the specified findings and recommendations to which he objects. 28 U.S.C. § 636(b)(1). The portions of

the Findings and Recommendations not specifically objected to will be reviewed for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Because the parties are familiar with the procedural and factual background of this case, it will not be restated here.

Judge Ostby granted Plaintiff's motion to proceed in forma pauperis regarding his habeas petition but denied his motions for appointment of counsel and for an evidentiary hearing as premature. As Judge Ostby explained, habeas petitions must be prescreened pursuant to Rule 4 of the Rules Governing § 2254 Cases. The Court will determine whether appointment of counsel, an evidentiary hearing, and discovery are appropriate at that time and thus were properly denied by Judge Ostby as premature. Plaintiff's objections likewise are premature because the Court has not made a final determination regarding his motions for discovery and for the appointment of counsel. If the Court determines Plaintiff's habeas petition is meritorious, a scheduling order will be issued containing deadlines for the exchange of discovery. Until that time, Plaintiff's motions must be denied.

After a review of Judge Ostby's Findings and Recommendations, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Ostby's Findings and Recommendations (doc. 7) are adopted in full. Plaintiff's motion for summary

judgment is DENIED WITHOUT PREJUDICE as premature.

DATED this 15<sup>th</sup> day of February, 2013.

A handwritten signature in cursive script, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, District Judge  
United States District Court